

Extractivism and renewable energies: human rights violations in the context of socio-environmental conflicts.

Illustration using wind farms in San Dionisio del Mar, Oaxaca.

by Dr. Armelle Gouritin



Extractivism and renewable energies: human rights violations in the context of socio-environmental conflicts. Illustration using wind farms in San Dionisio del Mar, Oaxaca.¹

by Dr. Armelle Gouritin

This report is part of the project

“The Road from Paris to Sustainable Development: Effectively
Integrating Human Rights and Gender Equality into EU
Climate Actions”.

Table of Contents

3	Introduction
4	Policy context
7	Case study: wind farms in Oaxaca
9	The San Dionisio Case and the EU dimension
13	Policy recommendations
14	Conclusions
15	References
18	Biography of the Author

Abbreviations

CDM	Clean Development Mechanism
CER	Certified Emissions Reduction
EU-ETS	European Union Emissions Trading Scheme
ILO	International Labour Organization
LAC	Latin American Countries
LSC	Local Stakeholder Consultation
SDM	Sustainable Development Mechanisms
UNFCC	United Nations Framework Convention on Climate Change

1. The views expressed in this publication are those of the author and do not necessarily represent the views of the Heinrich Böll Foundation.

1. Introduction

The Mexican case study report is a follow-up to the general interim report "*The Road from Paris to Sustainable Development*" commissioned by the Heinrich-Böll-Stiftung, European Union. It focuses on the planning and design of renewable energy projects as a way to fulfil domestic climate commitments. More specifically, it addresses wind farm projects in Oaxaca and corresponding infringements of the rights of indigenous peoples.

With a view to illustrating and informing the general report, the case study report adopts a five-step approach. Firstly, it provides an analysis of the Mexican context in which EU climate policies indirectly impact human rights. Secondly, an overview of the specific

case being examined, the *San Dionisio del Mar* case, gives the reader a clear view of the factual circumstances relating to infringements of indigenous peoples' rights. Thirdly, the EU's indirect impact on human rights is addressed and explored in the *San Dionisio del Mar* case and subsequent similar cases of infringements of indigenous peoples' rights. The fourth step is to examine proposals for preventing similar human rights violations in future. And finally, these proposals are summarized as policy recommendations.

The case study draws on a wide range of sources, from legal norms to expert interviews, newspaper articles, academic articles and official reports at EU, regional and international level.

Picture credit: Sarai Bautista Mulia



2. Policy context

2.1 Ever increasing extractivism in Mexico and accompanying socio-environmental conflicts

In the context of this case study, the notion of extractivism is understood broadly as the “large volumes of natural resources’ appropriation or in natural resources’ exploitation.”² This definition also encompasses renewable energy and more particularly wind farms, which act as an illustration for this case study. Indeed, wind farms exploit wind, which is a natural resource. Several Latin American Countries (LAC) have been driving for an extractivism development model since the 1980s. Mexico is one of those countries.³

In the literature devoted to extractivism in LAC countries, Colombia and Mexico are qualified as orthodox countries⁴, as opposed to other countries such as Argentina, Bolivia, Ecuador and Venezuela. The latter are qualified as post-neoliberal countries.⁵ The extractivism development model (in both orthodox and post-neoliberal countries) generates many socio-environmental conflicts.

The roots of the many socio-environmental conflicts linked with extractivism projects that occur in Mexico are not to be found exclusively in the extractivist projects as such. The roots are to be found in the structural problems Mexico is facing (including poverty, inequality, exclusion, distinct world views and development notions, corruption, information opacity). In this tense context, extractivism projects are triggers for conflicts.

2.2 Policy context of socio-environmental conflicts in Mexico

Against the background of Mexico’s support for the extractivist development model and the socio-environmental conflicts that go with it, a few elements need to be stressed in order to understand

the context of those conflicts. Firstly, human rights defenders and environmental activists are in a critical situation. Secondly, the 2013 energy reform is driven by contradictions. It is both pushing for the production of renewable energy and paving the way for greater access to lands and territories for the installation of renewable projects, and guaranteeing mediation and participatory institutions in that respect. Thirdly, consultation with indigenous peoples is currently a much-debated issue.

Critical situation of human rights defenders and environmental activists

Human rights defenders in general and environmental activists in particular suffer a very critical situation in LAC.⁶ This is also true for Mexico, where not only are their actions criminalized⁷ and defamed, but they also face threats, violence and murders.

The latest reports in that respect are alarming: between 2010 and 2015, aggression against environmental defenders increased by 990%.⁸ In 2016, threats and intimidation represented the majority of those assaults (24% and 19%), followed by criminalization (18%), physical assaults (15%), and illegal custody (11%).⁹

As much as 43% of the attacks are carried out by state officials.¹⁰

Against this background, the conflicts that surround extractivist projects such as renewable energy production can take on a dramatic dimension, while renewable energy has been pushed forward by the ambivalent 2013 energy reform.

Mexican energy reform

The 2013 Mexican energy reform is to be taken into account in the context of this report as the reform of the peripheral state, i.e. the state where natural resources are located.¹¹ Our case study illustrates renewable energy in Mexico, the natural resources and

2. Veltmeyer, H. and Petras, J. (Coord.), *El modelo posneoliberal de desarrollo o el imperialismo neoextractivismo. ¿Un del siglo XXI?*, Ediciones Culturales Paidós, Editorial Crítica, 2015, Introduction, p. 38. On the notion of neoextractivism, see Ibid., pp. 52-53

3. Gallardo Robles, L.-J., “La defensa del Chuchutsipi: la lucha de las comunidades Totonocas por la vida”, Master thesis in social anthropology, Centro de Investigaciones y Estudios Superiores en Antropología Social, Mexico, 2016, p. 15. Translation by the author, copy with the author. See also Veltmeyer, H. and Petras, J. (Coord.), op. cit., Introduction, p. 17.

4. In the sense that their approach to extractivism remains under the logic of the Washington consensus.

5. Veltmeyer, H. and Petras, J. (Coord.), op. cit., Introduction, p. 28.

6. See Global Witness, *En terreno peligroso*, 2016, available on 21 September 2017 at < <https://www.globalwitness.org/en/reports/terreno-peligroso/> >.

7. For a definition of the criminalization process of human rights defenders see Protection International, *Criminalización de Defensoras y Defensores de Derechos Humanos*, 2016, available on 19 September 2017 at < https://protectioninternational.org/wp-content/uploads/2016/01/PI_Criminalisation_Spanish_PrintReady1.pdf >, p. 4. And Ibid. p. 41 for an illustration of environmental rights defenders’ criminalization in Mexico. See also Montalvo, T.-L., “En México se usa la ley para perseguir a defensores de derechos humanos y no para apoyar sus causas”, *Animal Político*, 10 October 2015,

available on 21 September 2017 at < <http://www.animalpolitico.com/2015/10/en-mexico-se-usa-la-ley-para-perseguir-a-defensores-de-derechos-humanos-y-no-para-apoyar-sus-causas/> > and Montalvo, T.-L., “Defensores de la tierra, criminalizados por autoridades estatales: Informe”, *Animal Político*, 25 February 2016, available on 21 September 2017 at < <http://www.animalpolitico.com/2016/02/defensores-de-la-tierra-criminalizados-por-autoridades-estatales-informe/> >.

8. Centro Mexicano de Derecho Ambiental (CEMDA), *Informe sobre la situación de los defensores ambientales en México 2015*, 2015, available on 21 September 2017 at < http://www.cemda.org.mx/wp-content/uploads/2011/12/Informe-defensores-2014-2015_final2.pdf >, p. 9. On aggression in the particular context of extractivist projects such as mining and oil exploitation, see de la Fuente López, A. and Olivera Villa, B. (Coord.), *FUNDAR, Las actividades extractivas en México: Estado actual. Anuario 2016*, 2017, available on 21 September 2017 at < <http://fundar.org.mx/mexico/pdf/Anuario2016FINAL.pdf> >, pp. 181-184.

9. Centro Mexicano de Derecho Ambiental (CEMDA), *Informe sobre la situación de los defensores ambientales en México (2016)*, 2016, available on 21 September 2017 < <http://www.cemda.org.mx/wp-content/uploads/2011/12/Informe-defensores-ambientales-2016.pdf> >, p. 19-20.

10. Ibid., p. 20.

11. On the notion of peripheral state, see Veltmeyer, H. and Petras, J. (Coord.), op. cit., Introduction, pp. 15-16.

lands that enable the production of wind power. As a peripheral state, Mexico has paved the way not only for international direct investments, but also for the exploitation of renewable energy. The latter aspect is crucial with a view to taking stock of the incentives for developing renewable energy that are directly relevant to the case of wind farms in San Dionisio del Mar, Oaxaca. The 2013 energy reform perfectly illustrates the role of Mexico in easing access to natural resources and lands in order to develop renewable energy projects.¹²

The energy reform comprises a legislative package (including constitutional changes) that substantially changes Mexican law in terms of energy management.¹³ In the context of the report, the reform is ambivalent. On the one hand, it favours renewable energy generation that can potentially restrict the rights of indigenous peoples. On the other hand, it puts forward participatory processes and social impact assessments.

Of interest for this report, it favours the generation, transformation, transmission and distribution of renewable energy. As illustrated by the case study, socio-environmental conflicts mainly occur at the (prospected) generation stage. Wind farms are considered “clean energies” and are favoured by the reform.¹⁴ The specificities of wind farms and renewable energy projects as extractive projects should not be forgotten. Unlike other extractive projects, they aim at contributing to climate change mitigation and fulfilling the Nationally Determined Contributions (NDCs) under the United Nations Framework Convention on Climate Change (UNFCCC).¹⁵

Wind farm projects that need large spaces and territories are megaprojects.¹⁶ The reform eases access to land with a view to generating electricity. Electricity generation takes precedence over other uses of land.¹⁷ Also, the groups that want to install energy production projects can have recourse to several legal ways to force access to land in the case of unsuccessful negotiations with

persons who have interests or property rights over the land (private persons, communities, ejidos,¹⁸ or indigenous peoples).¹⁹ This is a very powerful tool in terms of Mexico pushing for investment in renewable energy projects.

Another aspect of the reform is somewhat contradictory with the first aspect discussed above: it puts forward the respect for

- human rights, sustainable development and environmental protection,²⁰
- consultation of communities and indigenous peoples where the project is aimed at being installed,²¹
- and social impact assessment.²²

However, it is possible to question the legitimacy and fairness of the consultation process. As seen above, the project developers are able to make use of legally endorsed mechanisms that can force access to land, even if those who have interest in or ownership of the land disagree with the project. It may call into question the interest and relevance of participating in such a consultation process from the perspective of the communities and indigenous peoples.

Indigenous peoples' rights in the context of extractivism

Indigenous peoples are in a particularly vulnerable situation in the context of extractive projects in LAC countries: their socio-economical vulnerability goes together with the willingness of extraction project developers to access their territories, while they have to suffer the environmental damage that results from those projects. They are at the forefront of the socio-environmental conflicts generated by extractive projects.²³ This role falls under the label “ecology of the poor”, as they defend the natural resources upon which they depend to survive.²⁴

12. It should be kept in mind that the legal framework which results from the energy reform is not the only way Mexico has eased access to natural resources and lands. The country also mobilizes other forms to encourage renewable energies, such as recourse to the public force if socio-environmental conflicts hamper the smooth development and running of the energy projects (as seen above in the context of human rights violations and as will be illustrated in the study of the wind farms case in San Dionisio del Mar, Oaxaca).

13. On the energy reform, see Mexican Government, *Reforma energética*, available on 15 September 2017 at <<http://reformas.gob.mx/reforma-energetica/que-es>>. For a critical assessment of the reform, see Correa Sánchez, N., FUNDAR, *Defensa del territorio frente a proyectos del sector eléctrico en México, 2016*, available on 18 September 2017 at <<http://www.fundar.org.mx/mexico/pdf/Territorio.pdf>>.

14. Wind energy is expected to represent more than one third of the “clean energies” produced in Mexico. See Secretaría de Energía, *Programa de Desarrollo del Sistema Eléctrico Nacional (2017-2031)*, 2017, available on 13 September 2017 at <<https://www.gob.mx/sener/acciones-y-programas/programa-de-desarrollo-del-sistema-electrico-nacional-33462>>.

15. Those are -51% black carbon emissions and -22% greenhouse gases emissions, 2020-2030. See Mexican Government, *Intended Nationally Determined Contributions, Mexico*. Available on 28 November 2017 at <https://www.gob.mx/cms/uploads/attachment/file/162973/2015_indc_ing.pdf>.

16. How to define “megaprojects” is still debated. The elements usually taken into account are large investment commitment, complexity, long-lasting impact on the economy, the environment and society (see Brookes, Naomi J. and

Locatelli, Giorgio, “Power plants as megaprojects: Using empirics to shape policy, planning, and construction management”, *Utilities Policy*, 2015, Vol. 36, pp. 57–66). In the context of this report, the large-scale dimension in terms of land is the crucial element.

17. Decreto por el que se expiden la Ley de la Industria Eléctrica, la Ley de Energía Geotérmica y se adicionan y reforman diversas disposiciones de la Ley de Aguas Nacionales, *Diario oficial de la Nación*, 11 August 2014, Article 71.

18. A particular type of agrarian community.

19. Ibid., Articles 71, 79-89. On this issue, see Correa Sánchez, N., FUNDAR, op. cit., pp. 30, 32-35.

20. Ibid., Articles 4, 117-118.

21. Ibid., Article 119. This is somewhat awkward, as the mere adoption process of the energy reform is heavily criticized for having denied the consultation process and human rights’ screening. See Correa Sánchez, N., FUNDAR, op. cit., pp. 12-13.

22. Decreto por el que se expiden la Ley de la Industria Eléctrica, la Ley de Energía Geotérmica y se adicionan y reforman diversas disposiciones de la Ley de Aguas Nacionales, *Diario oficial de la Nación*, 11 August 2014, Article 120.

23. Veltmeyer, H. and Petras, J. (Coord.), op. cit., Introduction, pp. 13-14 and 55.

24. On this notion and its application to indigenous peoples, see Tetreault, D.-V., “México: La ecología política de la minería”, in Veltmeyer, H. and Petras, J. (Coord.), op. cit., p. 275.

Access to land is of particular relevance in the Mexican context for the installation of wind farms. As is the case with other extraction projects, wind farms need large spaces. Access to land for extraction purposes that are distinct from former purposes (for example agriculture or sacred sites) is described as “political ecology of territorial transformation”.²⁵ As an example, the portion of land allocated to mining activities in Mexico amounts to more than 25% of the national territory.²⁶ It illustrates territorial transformation, “conflicts for production of territories”²⁷ and “land hoarding”.²⁸

Access to land was a cornerstone issue in the Mexican revolution, and it still largely explains the current legal framework in terms of access to land and the peculiarities of land tenure. Agrarian communities have a set of rights and corresponding procedures aimed at guaranteeing their lands’ effective enjoyment. Indigenous peoples’ rights are also of utmost importance in the context of extraction projects, for their territories are often targeted in order to install extraction projects. The many indigenous peoples present in the Mexican territory²⁹ are in a vulnerable situation, and women in indigenous communities are even more vulnerable. A whole set of civil, political, social, cultural and human rights are guaranteed to them. Of relevance for this report, access to indigenous peoples’ territories and their right to be consulted before a project is implemented are regulated in international, regional and national law.

The case study focuses on the violation of indigenous peoples’ rights in the context of renewable energy projects, and illustrates those violations conducted by EU companies with a specific case: wind farms in San Dionisio del Mar, Oaxaca.

25. Veltmeyer, H. and Petras, J. (Coord.), op. cit., Introduction, p. 33.

26. Tetreault, D.-V., op. cit., p. 263.

27. In Spanish, “conflictos por la producción de los territorios”, *ibid.*, p. 259.

28. *Ibid.*, p. 63.

29. According to the latest data available, indigenous peoples represent between 11% and 15% of the Mexican population. See Aristegui noticias, “15% de la población mexicana es indígena; la mayoría viven en pobreza”, 9 August 2016, available on 18 September at <<http://aristeginoticias.com/0908/mexico/15-de-la-poblacion-mexicana-es-indigena-la-mayoria-viven-en-pobreza/>>.

3. Case study: wind farms in Oaxaca

Background information on the San Dionisio del Mar case

From the outset, it is worth mentioning that wind farms are a “capital-intensive activity”,³⁰ as they depend more on the exploitation of natural resources than on labour. This capital-intensive activity is highly developed in the Tehuantepec Isthmus in the State of Oaxaca. Oaxaca is a Mexican State where numerous wind farms are in operation or in the pipeline.³¹ In 2014 Oaxaca produced 90% of Mexican’s wind energy.³² The isthmus is an excellent location for wind farms because of its topography, it is called the “gold wind”.³³

San Dionisio del Mar is the case chosen in order to illustrate the main conflicts. The more recent and dramatic *Juchitán de Zaragoza* case would have been a very good case to illustrate the purpose of the report,³⁴ but preference has been given to the *San Dionisio del Mar* case.

The latter illustrates that human rights violations can occur in the context of wind farm installations, even if the wind farm project has been stopped. In other words: a wind farm project does not have to actually be installed and running for human rights violations to occur. These can occur as early as during the very first installation prospects.

Also, the *San Dionisio del Mar* case happened just before the energy reform. It can reasonably be expected that socio-environmental conflicts and related human rights violations have even been amplified, since the energy reform makes it easier for the development of renewable energy projects on the one hand while creating or consolidating consultation mechanisms whose poor implementation can generate human rights violations on the other.³⁵

In the end, the *San Dionisio del Mar* socio-environmental conflict was identified as the pioneer case in terms of social resistance to a wind project in the Isthmus that halted the project. This case has been identified as the starting point for the communities of the Isthmus to (successfully) organize themselves and stop wind farm projects.³⁶

A brief summary of the *San Dionisio del Mar* case follows in order to ease the reader’s understanding of the subsequent sections.



Picture credit: Sarai Bautista Mulia

30. On the notion, see Veltmeyer, H. and Petras, J. (Coord.), op. cit., “¿Un nuevo modelo o imperialismo extractivo?”, p. 55.

31. Citlalli L., “De eólicas, 90 % de inversiones en Oaxaca”, Noticias, Voz e Imagen de Oaxaca, 5 March 2017, available on 23 September 2017 at < <http://www.nvinoticias.com/nota/53072/de-eolicas-90-de-inversiones-en-oaxaca>>. See also NOTIMEX, “Tendrá Oaxaca el parque de energía eólica más grande de América Latina”, Excelsior, 12 May 2017, available on 23 September 2017 at < <http://www.excelsior.com.mx/nacional/2017/05/12/1163075#view-1>>. Bautista Mulia, S., *Confrontación de dos ideas de desarrollo. El posicionamiento de los ikoojt frente al Megaproyecto Eólico del Istmo de Tehuantepec*, Tesis presented with a view to obtaining the bachelor degree, Universidad Nacional Autónoma de México, Facultad de Ciencias Políticas y Sociales, Centro de Estudios Sociológicos, 2016. Copy with the author, p. 59.

32. NOTIMEX, “Oaxaca produce 90% de energía eólica de México”, El Economista, 8 September 2014, available on 23 September 2017 at < <http://eleconomista.com.mx/industrias/2014/09/08/oaxaca-produce-90-energia-eolica-mexico>>. See also Ródriguez, O., “SENER lanzará licitación para generar energía eólica en Oaxaca”, Milenio, 17 March 2017, available on 23 September 2017 at < http://www.milenio.com/estados/sener_lanzara_la_licitacion-generar_energia_eolica_en_Oaxaca_0_921508023.html>.

and Citlalli, L., “Aseguran inversión de 4 mil mdd para eólicas en el Istmo”, Noticias, Voz e Imagen de Oaxaca, 26 March 2017, available on 23 September 2017 at < <http://www.nvinoticias.com/nota/55057/aseguran-inversion-de-4-mil-mdd-para-eolicas-en-el-istmo>>.

33. Hurtado Sandoval, A., *Wind Energy Development in Mexico. A case study of the potential for local socio-economic benefits in Mareña*, Thesis for the fulfillment of the Master of Science in Environmental Management and Policy, International Institute for Industrial Environmental Economics, Lund, Sweden, January 2015, available on 9 October 2017 at < <https://lup.lub.lu.se/student-papers/search/publication/5049119>>, pp. 40-42.

34. On the *Juchitán* case, see Chaca, R., “En la mira, parque eólico número 28”, Noticias, Voz e Imagen de Oaxaca, 22 July 2016, available on 23 September 2017 at < <http://www.nvinoticias.com/nota/22786/en-la-mira-parque-eolico-numero-28>>.

35. The *Juchitán* case is a good illustration of the amplification phenomena.

36. CODIGODH, “Juchitán y el impacto de megaproyectos eólicos”, 10 July 2014, available on 6 October 2017 at < <https://codigodh.org/2014/07/10/juchitan-y-el-impacto-de-megaproyectos-eolicos/>>.



Picture credit: Sarai Bautista Mulia

In 2004, Preneal (a Spanish transnational company) signed a 30-year renewable agreement with the local authorities in San Dionisio del Mar and Santa María del Mar with a view to installing wind farms (132 wind turbines).³⁷ The energy produced by the wind farms had the capacity to generate 396 MW annually³⁸ and the potential to replace around 879,000 tons of CO₂.³⁹ Moreover, the project was meant to be bought by an operating company of Heineken and subsidiaries of the largest Coca-Cola bottler in the region.⁴⁰

In 2011, Preneal sold the project for 63,200,000 euros to Mareña Renovables (an international consortium).⁴¹ In 2011, the Mexican National Regulatory Energy Commission (*Comisión Reguladora de Energía – CRE*) granted Mareña Renovables permission to initiate the construction of the wind farm.⁴² From the start, some members of the communities (*ikjoots* and *Binniza* peoples) began to mobilize against the project because of its perceived environmental and social impacts. They were worried about the project's effect on the environment in general, fishing activity (essential for them), the noise caused by wind farms and the degradation of spiritual sites.

Those who resisted the installation of the wind farms suffered several threats from governmental authorities.⁴³ In November 2012 and February 2013, government authorities also unsuccessfully made use of public force in order to break the siege set up by the resisting communities.⁴⁴ Those attempts occurred even though a temporary suspension of the project had been granted by a decision of a court of justice ("*suspensión provisional del amparo*"). The definitive suspension was granted in 2015.

Adding to the threats and use of public force mentioned above, two others aspects are relevant for the report. Generally speaking, the project has generated large and long-lasting internal conflicts between members of the community and community authorities.⁴⁵ The fracture between the community members and community authorities was particularly heightened by a corruption scandal.

This scandal concerns the mayor of San Dionisio del Mar who allegedly received 1.12 million euros but kept this sum for himself and a few other persons.⁴⁶ The consultation process has also been strongly criticized for not respecting the requirements that apply. The deficiencies in the consultation process are detailed at more length in the next section.

In face of the communities' opposition, (late) political support for the communities in February of 2013 and legal sentences against it, the project was eventually abandoned by the Mareña Renovables company in November of 2014. The company nevertheless plans another wind farm project in nearby communities, where it also faces hostile and divided communities. The project's resettlement also generates a socio-environmental conflict that is mentioned in subsequent sections where relevant (i.e. when analogous to or different from the *San Dionisio* case). The author believes that these mentions help the reader to have a full picture of the structural problems of wind farm projects in the area.

37. In 2011, the Preneal project was bought by the Mareña Renewable Company. Rojas, R., "No instalará Mareña Renovables parque eólico en Dionisio del Mar", *La Jornada*, 18 February 2013, available on 6 October 2017 at <<http://www.jornada.unam.mx/2013/02/18/sociedad/039n1soc>>.

38. Ibid., p. 43.

39. Hurtado Sandoval, A., op. cit., p. 42.

40. Ibid., p. 44.

41. With this operation, Preneal realized a benefit of more than 1 000 million Mexican pesos, Rosa Rojas, "No instalará ...", op. cit.

42. Bautista Mulia. S., op. cit., p. 61.

43. Ibid, p. 66.

44. ecoosfera, "¡Excelentes noticias! San dionisio del mar festeja autonomía contra empresa eólica", 27 January 2016, available on 6 October 2017 at <<http://ecoosfera.com/2016/01/excelentes-noticias-san-dionisio-del-mar-festeja-autonomia-contra-empresa-eolica/>>.

45. Among others, see Briseño, P., "Desconocen a edil de San Dionisio del Mar", *Organización Radiofónica de Oaxaca, Noticias*, 17 March 2017, available on 6 October 2017 at <<http://www.ororadio.com.mx/noticias/2017/03/desconocen-a-edil-de-san-dionisio-del-mar/>>. See also Bautista Mulia, S., op. cit., pp. 63-64.

46. Rojas, R., "Muerto, el proyecto eólico en San Dionisio, Oaxaca: De Telegraaf", *La Jornada*, 9 June 2014, available on 6 October 2017 at <<http://www.jornada.unam.mx/2014/01/09/sociedad/035n1soc>>.

4. The San Dionisio case and the EU dimension

This section is aimed at identifying the EU's room for manoeuvre in terms of the prevention of human rights violations. The policy recommendations directed at the EU flow from this identification and are reported in the subsequent section.

To this end, the human rights violations that occurred in the *San Dionisio* case are reported and followed by the identification of the EU's dimension of the case. The identification of human rights violations and the EU's dimension allow an analysis of the current shortages in terms of a preventive rights-based approach to cases similar to *San Dionisio*.

4.1 Indigenous peoples' right to consultation

Indigenous peoples' right to consultation in order to obtain their free, prior and informed consent is an application of the right to participation and is firmly settled in international, regional and national law (see table below). Indigenous peoples' right to consultation must be read in conjunction with indigenous peoples' substantive rights. Indigenous peoples' right to consultation is a guarantee for the effective enjoyment of their substantive rights such as the right to gender equality, cultural identity and integrity, to freely exercise their own spirituality and beliefs, to health, the protection of a healthy environment, association, assembly, and freedom of expression and thought, land, territories and natural resources, the protection of cultural heritage and intellectual property, development, peace, security and protection, as well as the right to freely exercise their own spirituality and beliefs.⁴⁷ This is also firmly anchored in international and regional law.⁴⁸

Against this background, indigenous peoples' right to consultation has been violated in the *San Dionisio* case. In addition to the corruption scandal mentioned above, the Preneal company used an attendance list signed by community members in 2004 as a

document that demonstrated the community's agreement to the wind farm project.⁴⁹ Also, the community members did not have access to full and accurate information, which amplified opposition to the project.⁵⁰ The information was filtered (and allegedly retained) by the community authorities⁵¹ before the community took the decision on territorial affectation according to its governance rules. It includes information on the environmental and social impacts.⁵² National adjudicative bodies recognized the violation in two decisions in 2012 and 2015.

Mexico's implementation of indigenous peoples' right to consultation is highly problematic. It is a structural problem identified, *inter alia*, by the UN Special Rapporteur on the situation of human rights defenders, Michel Forst.⁵³ The cases subsequent to *San Dionisio* illustrate this structural problem.⁵⁴ The *Juchitán de Zaragoza* case is the first consultation case subsequent to the Energy Reform and presented by the Mexican Government as a "model" for forthcoming consultations. Still, the Zapoteca indigenous people in the *Juchitán de Zaragoza* case⁵⁵ and various international instances raise very serious concerns in terms of the violation of the right to consultation in this specific "model" case.⁵⁶

With a view to formulating the policy recommendations directed at the EU that flow from the case study, identifying the EU's dimension of the case study is a necessary step. This identification is done in the subsequent sub-section.

47. American Declaration on the Rights of Indigenous Peoples, 2016, respectively Articles 6, 13, 16, 18, 19, 20, 25, 28, 29, and 30.

48. See the table below, and more particularly the case law of the Inter-American Court of Human Rights.

49. Bautista Mulia, S., op. cit., pp. 60, 69.

50. On lack of information as generating opposition to the Project, see *ibid.*, p 115.

51. *Ibid.*, pp. 63, 74, 76-77, 88, 95-96, 99.

52. *Ibid.*, pp. 79-82.

53. UN, Office of the High Commissioner on Human Rights, "End of mission statement by the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst on his visit to Mexico from 16 to 24 January 2017", 24 January 2017, available on 18 October at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21111&LangID=E>>. See also ProDESC, "El derecho a la consulta de comunidades y pueblos indígenas, una deuda histórica del gobierno mexicano", available on October 18 2017 at <<http://www.prodesc.org.mx/index.php/2014-04-21-22-19-12/2014-04-21-23-13-29/537-el-derecho-a-la-consulta-de-comunidades-y-pueblos-indigenas-una-deuda-historica-del-gobierno-mexicano>> and Torres, M., "Prior Consultation and Extractivism in Latin America", in

Woertz Eckart (coord.) 2018. *Crisis and Conflict in the Agrarian World: An Evolving Dialectic*, Centre for Agriculture and Biosciences International-CABI (forthcoming).

54. Among others, see Manzo, D., "Prevalece impunidad en comunidades indígenas que defienden su tierra", 22 April 2017, reproduced on the website of the ProDESC at <<http://www.prodesc.org.mx/index.php/2014-04-21-22-19-12/prodesc-en-medios/notas/531-prevalece-impunidad-en-comunidades-indigenas-que-defienden-su-tierra>>, available on 18 October 2017. Some proposals to solve the structural problems are put forward, see among others Centro de Colaboración Cívica, "Mapa de aprendizajes, preocupaciones y retos para la implementación de la consulta indígena en México", 2016, copy with the autor.

55. See ProDESC, "Caso de la Comunidad indígena zapoteca de Juchitán, Oaxaca", no date, available on 18 October 2017 at <<http://www.prodesc.org.mx/index.php/2-uncategorised/384-caso-de-la-comunidad-indigena-zapoteca-de-juchitan-oaxaca>>.

56. See UN, Office of the High Commissioner on Human Rights, "Informe del Grupo de Trabajo de la ONU sobre empresas y derechos humanos acerca de su misión a México", 8 June 2017, available on 18 October 2017 at <http://www.hchr.org.mx/index.php?option=com_k2&view=item&id=982:informe-del-grupo-de-trabajo-de-la-onu-sobre-empresas-y-derechos-humanos-acerca-de-su-mision-a-mexico&Itemid=281>, para. 105.

INDIGENOUS PEOPLES’ RIGHT TO CONSULTATION IN INTERNATIONAL, REGIONAL AND NATIONAL LAW

INTERNATIONAL LAW	REGIONAL LAW / ORGANIZATION OF AMERICAN STATES	NATIONAL LAW (FEDERAL LEVEL)
<p>INDIGENOUS AND TRIBAL PEOPLES CONVENTION, NO.169 (1989)</p> <p><i>International Labour Organization (ILO)</i></p> <p><i>Mexico ratified the Convention on 5 September 1990</i></p> <ul style="list-style-type: none"> Article 6 Article 7 Article 15 Article 17 	<p>AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2016)</p> <ul style="list-style-type: none"> Article 21(2) Article 23 Article 29(4) 	<p>POLITICAL CONSTITUTION OF THE MEXICAN UNITED STATES</p> <ul style="list-style-type: none"> Article 2 Article 26
<p>UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2007)</p> <ul style="list-style-type: none"> Article 11 Article 19 Article 27 Article 28(1) Article 32(2) 	<p>CASE LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS</p> <ul style="list-style-type: none"> Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, 2001, Serie C No. 79. Yakye Axa Indigenous Community Vs. Paraguay, 2005, Serie C No. 125. Yatama vs. Nicaragua, 2005, Serie C No. 127. Pueblo Saramaka vs. Surinam, 2007, Serie C No. 172. Pueblo Saramaka vs. Surinam, 2008, Serie C No. 172. Comunidad Indígena Xákmok Kásek vs. Paraguay, 2010, Serie C No. 214. Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012, Serie C No. 245. Comunidades Afrodescendientes desplazadas de la Cuenca del río Cacarica (operación Génesis) vs. Colombia, 2013, Serie C No. 270. Pueblos Indígenas Kuna de Madungandí y Emberá de Bayano y sus miembros vs. Panamá, 2014 , Serie C No. 284. Comunidad Garífuna de Punta Piedra y sus miembros vs. Honduras, 2015, Serie C No. 304. Comunidad Garífuna Triunfo de la Cruz y sus miembros vs. Honduras, 2015, Serie c No. 305. Pueblos Kaliña y Lokono vs. Surinam, 2015, Serie C No. 309. 	<p>LAW ON PLANNING</p> <ul style="list-style-type: none"> Article 1(4) Article 14 Article 20
		<p>LAW ON THE NATIONAL COMMISSION FOR INDIGENOUS PEOPLES’ DEVELOPMENT</p> <ul style="list-style-type: none"> Article 3(VI)
		<p>LAW ON THE ELECTRICITY INDUSTRY</p> <ul style="list-style-type: none"> Article 119
		<p>REGULATION OF THE LAW ON THE ELECTRICITY INDUSTRY</p> <ul style="list-style-type: none"> Articles 89-92

Table 1. Right to consultation: a firm recognition at international, regional and national (federal) level (elaborated by the author)

4.2 The EU's indirect impact in the San Dionisio case

The EU has been indirectly involved in the *San Dionisio* case. With a view to identifying the EU's potential responses in terms of climate justice, it is necessary to spell out this indirect involvement.

Companies in EU Member States that are seeking to develop wind farms in the Tehuantepec Isthmus and currently running such projects are extremely active (most notably French and Spanish companies).⁵⁷ These wind farm projects are registered under the UN Clean Development Mechanism of the UNFCCC system.⁵⁸ In this capacity they generate international credits, the so-called "Certified Emissions Reductions" (CERs).⁵⁹ The general report already elaborates on the link between the international credits and the EU on the one hand, and the future carbon market and the EU on the other.⁶⁰ The findings of the general report do not need to be reproduced here.

More specifically, three instances have been discerned in which Member States and the EU could play a role in the governance, set-up and implementation of wind farm projects under the CDM mechanism. These concern the following EU and Member States competences: Member States' competence in terms of CDM projects, the EU's competences concerning the EU-ETS' governance, and the EU's competences in international negotiations regarding governance of the CDM and the Sustainable Development Mechanisms (SDM) mandated under the Paris Agreement.

- Member States are responsible for the authorization they grant to public or private entities that wish to participate in CDM projects and the link between the EU-ETS and the CERs.
- The EU as a participant in international carbon markets. While the EU could shape the EU-ETS scheme as a domestic policymaker,⁶¹ it also plays a crucial role in agreements with other carbon markets.
- The EU as an international negotiating actor. The EU has competencies to negotiate and conclude agreements between the Union and third countries or international organizations in some areas (Treaty on the functioning of the EU, Article 218). It applies in the field of climate change and agreements that refer to mutual recognition with other greenhouse gas emissions trading schemes (EU-ETS Directive, Article 25).

Identifying firstly the human rights violations that occurred in the context of a wind farm project registered under the CDM mechanism and secondly the EU's dimension of the case study makes it possible to perform a critical analysis of the current mechanisms in terms of a preventive rights-based approach from the perspective of the EU and its roles identified in the general report: the EU as a domestic and international player. This critical analysis is performed in the subsequent sub-section.

4.3 Current shortages in terms of a preventive rights-based approach to CDM projects

Preventive rights-based approach in the context of the EU-ETS

No safeguards and/or exclusion list apply to wind farm projects such as *San Dionisio*. Unlike hydropower projects, no special guidelines have been adopted in the field of wind farm or solar energy projects. Hydropower projects have been severely criticized for the many adverse environmental and social impacts they generate. Accordingly, the EU has provided for special safeguards in the EU-ETS Directive (Article 11b(6)):

"In the case of hydroelectric power production project activities with a generating capacity exceeding 20 MW, Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams November 2000 Report 'Dams and Development — A New Framework for Decision-Making', will be respected during the development of such project activities."

In light of the problems this specification has created in terms of harmonization and a common level playing field, the European Commission and EU Member States have developed a template that aims at harmonizing the compliance step within the EU.⁶² The public or private parties that look for Member States' approval of the project can use the template and explanatory note with a view to demonstrating compliance with the requirements. However, this is not compulsory. It remains a voluntary procedure and the final decision on the project's compliance with Article 11b(6) remains with the Member State.

Several parts of the template are directly relevant to the weak governance of wind farm and solar panel projects in terms of

57. See the map available at Chaca, R., op. cit.

58. Business and Human Rights Resource Centre, *Mexico: Oaxaca Wind Farms impact indigenous peoples in Oaxaca*, available on 7 October 2017 at <<https://business-humanrights.org/en/mexico-oaxaca-wind-farms-impact-indigenous-peoples-in-oaxaca>>.

59. All the CERs generated by Spanish projects in the wind farm sector in Mexico are on the positive list of the EU. As such they qualify as eligible International Credit Holdings (ICH) under the registry Regulation 389/2013. Information obtained through the European Commission's positive list available at https://ec.europa.eu/clima/policies/ets/markets_en#tab-0-1 on 17 October 2017, and crossed with the projects' references available on the UNFCCC website, available at <http://cdm.unfccc.int/Projects/projsearch.html> on 17 October 2017.

60. The Sustainable Development Mechanisms (SDM) mandated under the Paris Agreement.

61. European Commission competences include monitoring, verification and accreditation, imposing operating bans, developing guidelines, running the registry, and reporting project activities.

62. European Commission and Member States, *Guidelines on a common understanding of Article 11b (6) of Directive 2003/87/EC as amended by Directive 2004/101/EC (non-paper)*, 17 November 2008. The guidelines are available on 19 October 2017 at <https://ec.europa.eu/clima/sites/clima/files/ets/markets/docs/art11b6_guide_en_0.pdf>. The template is available on 19 October 2017 at <https://ec.europa.eu/clima/sites/clima/files/ets/markets/docs/art11b6_comp_temp_en_0.pdf>.

human rights, and more particularly indigenous peoples' right to consultation.⁶³ Such a template could be used as a basis for the development of a similar mechanism for wind farm or solar energy projects. The San Dionisio case illustrates the necessity for such a mechanism, which could prevent their right being violated.



Picture credit : Sarai Bautista Mulia

Preventive rights-based approach at the international level

The CDM mechanisms poorly prevent infringements of the rights of affected communities. Since 2015, the UNFCCC CDM has transmitted concerns about human rights violations to UN human rights bodies and the host country.⁶⁴ However, this mechanism has been strongly criticized for being inefficient.⁶⁵ Secondly, the local stakeholder consultation (LSC – in our case the *San Dionisio del Mar*

Community) is necessary for the CDM project to be registered and is applied during the design and validation stages.⁶⁶ Other weak points of the mechanism include failing to provide criteria that flesh out the consultation requirement, and being limited to the first stages of a project.⁶⁷ Therefore, those mechanisms cannot be deemed adequate and clearly did not prevent the violation of the right of indigenous peoples to be consulted in the *San Dionisio* case. This case illustrates indigenous peoples' impossible reliance on existing mechanisms to prevent human rights' violations.

To conclude, there are currently no existing remedies, neither within the EU-ETS legal framework, nor within the UNFCCC process, to protect communities in third countries that could be potentially affected by a CDM wind farm project. Several proposals have been made to introduce a grievance or appeal mechanism.⁶⁸ As the *San Dionisio* case illustrates, potentially affected communities would have such a mechanism at their disposal in order to question any authorization and validation for a project that potentially infringes their rights or currently infringes their rights. So far and despite the documented proposals in that sense, no such mechanism has been settled.

The human rights violations that occurred in the *San Dionisio* case, clarification of the EU's dimension of the case and critical analysis of the current system from the perspective of a rights-based approach allow for the EU's room for manoeuvre to be identified in terms of policy recommendations. They are spelled out in the subsequent sections.

63. Criteria 1. Gaining public acceptance, 3. Addressing existing (...) projects, 4. Sustaining rivers and livelihoods, 5. Recognizing entitlements and sharing benefits, 6. Ensuring compliance, 7. Sharing rivers for peace, development and security.

64. CDM Executive Board eighty-seventh meeting, CDM EB 87, Meeting Report, 2015, para. 52.

65. Among others, see MISEREOR, CIDSE and Carbon Market Watch, *Human Rights Implications of Climate Mitigation Actions*, 2nd Ed., 2016, available on 16 October 2017 at < <https://euagenda.eu/upload/publications/untitled-2780-ea.pdf>>.

66. Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, CDM, Decision 3/C MP.1, FCCC/KP/CMP/2005/8/Add.1, Annex: Modalities and Procedures for a clean development mechanism, 37(b), 40(a), and 40(c).

67. Among others, see MISEREOR, CIDSE and Carbon Market Watch, op. cit., pp. 15 and 24-25.

68 Among others, see CIEL and Earthjustice, *Joint submission on the implementation of local stakeholder consultation and global stakeholder consultation during the validation process of the CDM*, 2011, available on 15 October 2017 at < https://cdm.unfccc.int/public_inputs/2011/eb62_02/cfi/0IF4MXF00HYLB6444AXOWS729TB0XX>, p.6; and Asociación Interamericana para la Defensa del Ambiente, Center for International Environmental Law, Earthjustice, and International Rivers, *Submission on views regarding the revision of the CDM modalities and procedures*, 2013, available on 15 October 2017 at < <http://unfccc.int/resource/docs/2013/smsn/ngo/352.pdf>>, p. 5; and Filzmoser, E., Voigt, J., Trunk, U., Olsen, K. H., & Jegede, A. O., *The need for a Rights-based approach to the clean development mechanism*, 2015, Centre for International Sustainable Development Law, pp. 8-9 and 14-16.

5. Policy recommendations

With a view to remedying the violations illustrated by the case study and prevent future conflicts, a rights-based approach should be endorsed by EU institutions for CDM projects that are linked with the EU-ETS, and more generally for future mutual recognition between the EU-ETS and actual or future international markets. The subsequent policy recommendations reflect this rights-based approach. This requirement applies in particular to large hydropower and wind farm projects, as they have a demonstrated record of impact in terms of human rights infringements. It should also apply to other renewable energy sources.

EU level: the EU-ETS

The EU should extend the aforementioned template and guidelines mechanisms that apply to large hydroelectric projects to all renewable energy projects such as wind farm or solar panel projects. The San Dionisio case, other projects mentioned in this report and the references therein illustrate that they have a demonstrated record of serious human rights infringements associated with their development.

The EU-ETS Directive should be modified to introduce a provision that would foresee the linking suspension in case of serious human rights infringements. In this context, the EU should perform a screening of all existing CDM wind farm projects in Mexico. In light of the structural problems identified in terms of indigenous peoples' right to consultation, the linking of CER allowances with the EU-ETS should be put on hold until the European Commission identifies those problems on a case-by-case basis and is provided with documented guarantees that the structural problem has been addressed and there are no further infringements of indigenous peoples' right to consultation.

The EU should not limit its human rights screening to human rights as they are guaranteed in international or EU law. Due attention should be paid to human rights guaranteed at the regional and national level. Indigenous peoples' rights, and more particularly indigenous peoples' right to consultation, illustrates this requirement. While EU law does not recognize indigenous peoples' rights and international law does not provide clear and detailed requirements in terms of the quality of consultations, the Inter-American human rights protection system does provide for such detailed quality requirements and sets out practical guidelines in this respect.

International level: the EU as an international negotiating actor

The EU should keep pushing for the following changes to occur. Firstly, UNFCCC CDM mechanisms should not limit themselves to transmitting human rights violations concerns to UN human rights bodies and the host country.⁶⁹ The interplay between UNFCCC CDM mechanisms and UN human rights bodies should be mutual. UNFCCC mechanisms should also integrate and address the numerous human

rights violations that are documented to be directly caused by CDM projects. Secondly, the EU should keep pushing for the UNFCCC CDM mechanisms to address the serious human rights violations directly caused by CDM wind farms projects in Mexico. At least six such projects are currently registered as CDM projects.⁷⁰ Institutional changes are addressed in the subsequent sections. Thirdly, the UNFCCC system should provide the criteria and requirements that guarantee the effective local stakeholder consultation necessary for a CDM project to be registered. Fourthly, a grievance or appeal mechanism should be introduced within the CDM institutions.

Common to EU and international levels

When screening national legislations and institutions, international and EU mechanisms should not limit themselves to identifying whether or not human rights are robustly guaranteed at the national level. International and EU mechanisms should devote strong attention to the practical functioning of national laws and institutions and ensuring that human rights are fully enjoyed by communities and private persons. The mechanisms aimed at guaranteeing the effective enjoyment of human rights in the context of energy projects should not be limited to the initial project development phase, but should rather extend from the very first development phases of the project to the running and end of exploitation phases, i.e. to the whole life cycle of the project.

⁶⁹. CDM Executive Board eighty-seventh meeting, CDM EB 87, Meeting Report, 2015, para. 52.

⁷⁰. La Venta II (ref. 846), La Ventosa Wind Energy Project (ref. 11509), Oaxaca III Wind Energy Project (ref. 5676), Oaxaca II Wind Energy Project (ref. 5894), Oaxaca IV Wind Energy Project (ref. 6216), and Fuerza y Energía Bii Hioxo Wind Farm (ref. 7346).

6. Conclusions

As the Mexican case study shows, by considering human rights in planning, designing and implementing climate action, EU policymakers can avoid harmful unintended consequences and at the same time ensure the effectiveness and sustainable development benefits of their programmes and projects.

Set against the particularly conflictual environmental and human rights abuses in Mexico, the wind farm projects that are run in Oaxaca by companies located in the EU and under the CDM schemes have indirectly impacted the rights of indigenous peoples in the particular case study. These involve a whole series of rights, and notably their right to be consulted. These infringements put at risk their mere existence as indigenous peoples.

A number of policy recommendations have been formulated. These relate to the three major roles of the EU as identified in the general report, namely the EU as a domestic policymaker with regard to the EU-ETS, the EU as an international negotiating actor and the EU as a participant in international carbon markets when it comes to the UNFCCC CDM mechanism, future linking between the EU-ETS, and the future market mechanisms similar to the CDM.

Although the case study focuses on the Mexican situation, several of its features reflect social and ecological conflicts that are typical of Mexico and LAC countries. Therefore, the Mexican case and recommendations formulated in this context should be read in the broader context of LAC countries. The intensive exploitation of natural resources that goes hand-in-hand with escalating social conflicts places indigenous peoples at the forefront of socio-environmental conflicts. The negative social and human rights impacts should be addressed by the EU not only on a case-by-case (or country-by-country) basis, but also on a sub-continental one.

7. References

- Aristegui noticias, "15% de la población mexicana es indígena; la mayoría viven en pobreza", 9 August 2016, available on 18 September at <<http://aristeginoticias.com/0908/mexico/15-de-la-poblacion-mexicana-es-indigena-la-mayoria-viven-en-pobreza/>>
- Asociación Interamericana para la Defensa del Ambiente, Center for International Environmental Law, Earthjustice, and International Rivers, *Submission on views regarding the revision of the CDM modalities and procedures*, 2013, available on 15 October 2017 at <<http://unfccc.int/resource/docs/2013/smsn/ngo/352.pdf>>
- Bautista Mulia, S., *Confrontación de dos ideas de desarrollo. El posicionamiento de los ikoojt frente al Megaproyecto Eólico del Istmo de Tehuantepec*, Tesis presented with a view to obtaining the bachelor degree, Universidad Nacional Autónoma de México, Facultad de Ciencias Políticas y Sociales, Centro de Estudios Sociológicos, 2016. Copy with the author
- Briseño, P., "Desconocen a edil de San Dionisio del Mar", *Organización Radiofónica de Oaxaca, Noticias*, 17 March 2017, available on 6 October 2017 at <<http://www.ororadio.com.mx/noticias/2017/03/desconocen-a-edil-de-san-dionisio-del-mar/>>
- Brookes, Naomi J. and Locatelli, Giorgio, "Power plants as megaprojects: Using empirics to shape policy, planning, and construction management", *Utilities Policy*, 2015, Vol. 36, pp. 57–66
- Business and Human Rights Resource Centre, *Mexico: Oaxaca Wind Farms impact indigenous peoples in Oaxaca*, available on 7 October 2017 at <<https://business-humanrights.org/en/mexico-oaxaca-wind-farms-impact-indigenous-peoples-in-oaxaca>>
- Calfio Montalva, M. and Fernanda and Velasco, L., "Mujeres indígenas en América Latina: ¿brechas de género o de etnia?", in *Pueblos indígenas y afrodescendientes de América Latina y el Caribe: información sociodemográfica para políticas y programas*, Comisión Económica para América Latina y el Caribe (CEPAL), 2006, available on 12 September 2017 at <http://repositorio.cepal.org/bitstream/handle/11362/4043/S2006017_es.pdf?sequence=1&isAllowed=y>
- CDM, Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, CDM, Decision 3/C MP.1, FCCC/KP/CMP/2005/8/Add.1, Annex: Modalities and Procedures for a clean development mechanism
- CDM, CDM Executive Board eighty-seventh meeting, CDM EB 87, Meeting Report, 2015
- Centro de Colaboración Cívica, "Mapa de aprendizajes, preocupaciones y retos para la implementación de la consulta indígena en México", 2016, copy with the author
- Centro Mexicano de Derecho Ambiental (CEMDA), *Informe sobre la situación de los defensores ambientales en México (2015)*, 2015, available on 21 September 2017 at <http://www.cemda.org.mx/wp-content/uploads/2011/12/Informe-defensores-2014-2015_final2.pdf>
- Centro Mexicano de Derecho Ambiental (CEMDA), *Informe sobre la situación de los defensores ambientales en México (2016)*, 2016, available on 21 September 2017 at <<http://www.cemda.org.mx/wp-content/uploads/2011/12/Informe-defensores-ambientales-2016.pdf>>
- Chaca, R., "En la mira, parque eólico número 28", *Noticias, Voz e Imagen de Oaxaca*, 22 July 2016, available on 23 September 2017 at <<http://www.nvinoticias.com/nota/22786/en-la-mira-parque-eolico-numero-28>>
- CIEL and Earthjustice, *Joint submission on the implementation of local stakeholder consultation and global stakeholder consultation during the validation process of the CDM*, 2011, available on 15 October 2017 at <https://cdm.unfccc.int/public_inputs/2011/eb62_02/cf/01F4MXF00HYLB6444AXOWS729TB0XX>
- Citlalli L., "De eólicas, 90 % de inversiones en Oaxaca", *Noticias, Voz e Imagen de Oaxaca*, 5 March 2017, available on 23 September 2017 at <<http://www.nvinoticias.com/nota/53072/de-eolicas-90-de-inversiones-en-oaxaca>>
- Citlalli, L., "Aseguran inversión de 4 mil mdd para eólicas en el Istmo", *Noticias, Voz e Imagen de Oaxaca*, 26 March 2017, available on 23 September 2017 at <<http://www.nvinoticias.com/nota/55057/aseguran-inversion-de-4-mil-mdd-para-eolicas-en-el-istmo>>
- CODIGODH, "Juchitán y el impacto de megaproyectos eólicos", 10 July 2014, available on 6 October 2017 at <<https://codigodh.org/2014/07/10/juchitan-y-el-impacto-de-megaproyectos-eolicos/>>
- Comisión Nacional para el Desarrollo de los Pueblos Indígenas, *Indicadores Socioeconómicos de los Pueblos Indígenas de México (2015)*, 2017, available on 15 September 2017 at <<https://www.gob.mx/cdi/articulos/indicadores-socioeconomicos-de-los-pueblos-indigenas-de-mexico-2015-116128>>
- Correa Sánchez, N., FUNDAR, *Defensa del territorio frente a proyectos del sector eléctrico en México*, 2016, available on 18 September 2017 at <<http://www.fundar.org.mx/mexico/pdf/Territorio.pdf>>
- Decreto por el que se expiden la Ley de la Industria Eléctrica, la Ley de Energía Geotérmica y se adicionan y reforman diversas disposiciones de la Ley de Aguas Nacionales, *Diario oficial de la Nación*, 11 August 2014 de la Fuente López, A. and Olivera Villa, B. (Coord.), FUNDAR, *Las actividades extractivas en México: Estado actual. Anuario 2016*, 2017, available on 21 September 2017 at <<http://fundar.org.mx/mexico/pdf/Anuario2016FINAL.pdf>>

- ecoosfera, "¡Excelentes noticias! San dionisio del mar festeja autonomía contra empresa eólica", 27 January 2016, available on 6 October 2017 at <http://ecoosfera.com/2016/01/excelentes-noticias-san-dionisio-del-mar-festeja-autonomia-contra-empresa-eolica/>
- European Commission and Member States, *Guidelines on a common understanding of Article 11b (6) of Directive 2003/87/EC as amended by Directive 2004/101/EC (non-paper)*, 17 November 2008, available on 19 October 2017 at https://ec.europa.eu/clima/sites/clima/files/ets/markets/docs/art11b6_guide_en_0.pdf
- Filzmoser, E., Voigt, J., Trunk, U., Olsen, K. H., & Jegede, A. O., *The need for a Rights-based approach to the clean development mechanism*, 2015, Centre for International Sustainable Development Law
- Gallardo Robles, L.-J., "La defensa del Chuchutsipi: la lucha de las comunidades Totonocas por la vida", Master thesis in social anthropology, Centro de Investigaciones y Estudios Superiores en Antropología Social, Mexico, 2016
- Global Witness, *En terreno peligroso*, 2016, available on 21 September 2017 at <https://www.globalwitness.org/en/reports/terreno-peligroso/>
- Hurtado Sandoval, A., *Wind Energy Development in Mexico. A case study of the potential for local socio-economic benefits in Mareña*, Thesis for the fulfillment of the Master of Science in Environmental Management and Policy, International Institute for Industrial Environmental Economics, Lund, Sweden, January 2015, available on 9 October 2017 at <https://lup.lub.lu.se/student-papers/search/publication/5049119>
- Mexican Government, *Reforma energética*, available on 15 September 2017 at <http://reformas.gob.mx/reforma-energetica/que-es>
- Manzo, D., "Prevalece impunidad en comunidades indígenas que defienden su tierra", 22 April 2017, reproduced on the website of the ProDESC at <http://www.prodesc.org.mx/index.php/2014-04-21-22-19-12/prodesc-en-medios/notas/531-prevalece-impunidad-en-comunidades-indigenas-que-defienden-su-tierra> >, available on 18 October 2017
- MISEREOR, CIDSE and Carbon Market Watch, *Human Rights Implications of Climate Mitigation Actions*, 2nd Ed., 2016, available on 16 October 2017 at <https://euagenda.eu/upload/publications/untitled-2780-ea.pdf>
- Montalvo, T.-L., "En México se usa la ley para perseguir a defensores de derechos humanos y no para apoyar sus causas", *Animal Político*, 10 October 2015, available on 21 September 2017 at <http://www.animalpolitico.com/2015/10/en-mexico-se-usa-la-ley-para-perseguir-a-defensores-de-derechos-humanos-y-no-para-apoyar-sus-causas/>
- Montalvo, T.-L., "Defensores de la tierra, criminalizados por autoridades estatales: Informe", *Animal Político*, 25 February 2016, available on 21 September 2017 at <http://www.animalpolitico.com/2016/02/defensores-de-la-tierra-criminalizados-por-autoridades-estatales-informe/>
- NOTIMEX, "Oaxaca produce 90% de energía eólica de México", *El Economista*, 8 September 2014, available on 23 September 2017 at <http://eleconomista.com.mx/industrias/2014/09/08/oaxaca-produce-90-energia-eolica-mexico>
- NOTIMEX, "Tendrá Oaxaca el parque de energía eólica más grande de América Latina", *Excelsior*, 12 May 2017, available on 23 September 2017 at <http://www.excelsior.com.mx/nacional/2017/05/12/1163075#view-1>
- Organization of American States, *American Declaration on the Rights of Indigenous Peoples*, 2016
- ProDESC, "El derecho a la consulta de comunidades y pueblos indígenas, una deuda histórica del gobierno mexicano", no date, available on October 18 2017 at <http://www.prodesc.org.mx/index.php/2014-04-21-22-19-12/2014-04-21-23-13-29/537-el-derecho-a-la-consulta-de-comunidades-y-pueblos-indigenas-una-deuda-historica-del-gobierno-mexicano>
- ProDESC, "Caso de la Comunidad indígena zapoteca de Juchitán, Oaxaca", no date, available on 18 October 2017 at <http://www.prodesc.org.mx/index.php/2-uncategorised/384-caso-de-la-comunidad-indigena-zapoteca-de-juchitan-oaxaca>
- Protection International, *Criminalización de Defensoras y Defensores de Derechos Humanos*, 2016, available on 19 September 2017 at https://protectioninternational.org/wp-content/uploads/2016/01/PI_Criminalisation_Spanish_PrintReady1.pdf
- Rojas, R., "No instalará Mareña Renovables parque eólico en Dionisio del Mar", *La Jornada*, 18 February 2013, available on 6 October 2017 at <http://www.jornada.unam.mx/2013/02/18/sociedad/039n1soc>
- Rojas, R., "Muerto, el proyecto eólico en San Dionisio, Oaxaca: De Telegraaf", *La Jornada*, 9 June 2014, available on 6 October 2017 at <http://www.jornada.unam.mx/2014/01/09/sociedad/035n1soc>
- Rodríguez, O., "SENER lanzará licitación para generar energía eólica en Oaxaca", *Milenio*, 17 March 2017, available on 23 September 2017 at http://www.milenio.com/estados/sener_lanzara_la_licitacion-generar_energia_eolica_en_Oaxaca_0_921508023.html
- Secretaría de Energía, *Programa de Desarrollo del Sistema Eléctrico Nacional (2017-2031)*, 2017, available on 13 September 2017 at <https://www.gob.mx/sener/acciones-y-programas/programa-de-desarrollo-del-sistema-electrico-nacional-33462>
- Tetreault, D.-V., "México: La ecología política de la minería", in Veltmeyer, H. and Petras, J. (Coord.), in Veltmeyer, H. and Petras, J. (Coord.), *El neoextractivismo. ¿Un modelo posneoliberal de desarrollo o el imperialismo del siglo XXI?*, Ediciones Culturales Paidós, Editorial Crítica, 2015
- Torres, M., "Prior Consultation and Extractivism in Latin America", in Woertz Eckart (coord.) 2018. *Crisis and*

Conflict in the Agrarian World: An Evolving Dialectic,
Centre for Agriculture and Biosciences International-CABI
(forthcoming)

- UN, Office of the High Commissioner on Human Rights, "End of mission statement by the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst on his visit to Mexico from 16 to 24 January 2017", 24 January 2017, available on 18 October at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21111&LangID=E>
- UN, Office of the High Commissioner on Human Rights, "Informe del Grupo de Trabajo de la ONU sobre empresas y derechos humanos acerca de su misión a México", 8 June 2017, available on 18 October 2017 at < http://www.hchr.org.mx/index.php?option=com_k2&view=item&id=982:informe-del-grupo-de-trabajo-de-la-onu-sobre-empresas-y-derechos-humanos-acerca-de-su-mision-a-mexico&Itemid=281>
- Veltmeyer, H. and Petras, J. (Coord.), *El neoextractivismo. ¿Un modelo posneoliberal de desarrollo o el imperialismo del siglo XXI?*, Ediciones Culturales Paidós, Editorial Crítica, 2015
- Walter, M., "Conflictos ambientales, socioambientales, ecológico distributivos, de contenido ambiental... Reflexionando sobre enfoques y definiciones", CIP-ECOSOCIAL – Boletín ECOS no6, febrero-abril 2009, available on 15 September 2017 at < http://www.crana.org/themed/crana/files/docs/252/180/2009_conflictos_ambientales_enfoques_definiciones.pdf>

Biography of the author

Armelle Gouritin holds a PhD in law (Vrije Universiteit Brussel, Institute for European Studies). Her main lines of investigation are environmental responsibility, and the link between human rights and environmental protection. She has written extensively along those lines of investigation and written several reports for EU institutions and NGOs. She is currently a researcher at the Facultad Latinoamericana de Ciencias Sociales – Mexico (plaza cátedra CONACYT).

